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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/654,170

09/03/2003

Lonnie F. Gary

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LOCKE LIDDELL & SAPP LLP

ATTN: DOCKETING DEPT.

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DALLAS, TX 75201-6776

EXAMINER

TRUONG, BAO Q

ART UNIT

PAPER NUMBER

2875

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/654,170

Applicant(s)

GARY ET AL.

Examiner

Bao Q. Truong

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 26-37, 47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47 and 48 is/are allowed.
- 6) ☒ Claim(s) 1-12, 26-31 and 34-37 is/are rejected.
- 7) ☒ Claim(s) 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 12 and 32 are objected to because of the following informalities:  
  
Claim 12, there is lack of antecedent basis for "the light element" in line 2.  
  
Claim 32, "it" in line 3 should be changed to what it refers.  
  
Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12, 26-31 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over G.J.W. Gehl, Jr [US 3,674,612] in view of Smith [US 3,970,834] and Petrovsky [US 4,793,197].

Regarding claims 1 and 26, G.J.W. Gehl, Jr discloses artificial tree having a base [13], a telescoping center pole [10] supported vertically by the base [13], a plurality of curvilinear elements [15] of graduated diameter supported from the top [12] of the telescoping center pole [10] by a plurality of circumferentially spaced tethers [20], the diameter of the curvilinear elements [15] graduating in inverse proportion to the distance above the base [13] (figures 1-4). However, G.J.W. Gehl, Jr does not disclose the

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plurality of circumferentially spaced branches pivotally connected to the curvilinear elements and extending radially there from, and an electrical powered drive mechanism that is controllable by a user to selectively raise and lower the telescoping center pole.

Smith discloses the plurality of circumferentially spaced branches [20, 24, ...] pivotally connected to the curvilinear elements [11, ...] and extending radially there from (figures 1-4, column 1 lines 65-68, column 2 lines 1-5).

Petrovsky discloses an electrical powered drive mechanism [1, 2, 3, 4] that is controllable by a user to selectively raise and lower the telescoping center pole [T1, T2, ...] (figures 1-3, column 2 lines 20-50).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the artificial tree of G.J.W. Gehl, Jr with the plurality of circumferentially spaced branches pivotally connected therefrom as taught by Smith to easily fold inward toward the telescoping central pole, and to modify the base of G.J.W. Gehl, Jr with the electrical powered drive mechanism to selectively raise and lower the telescoping center pole for purpose of providing an advantageous way of storage the tree in a small space, and reducing needed elements for retaining and releasing telescoping elements thus reducing weight.

Regarding claim 2, G.J.W. Gehl, Jr discloses the curvilinear elements [15] being vertically spaced rings (figures 1-4).

Regarding claim 3, G.J.W. Gehl, Jr discloses the curvilinear elements [15] being part of a spiral frame (figures 1-4).

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Regarding claims 4 and 27, G.J.W. Gehl, Jr discloses a top tree section [11] attachable to the top of the telescoping center pole [10] (figures 1-2).

Regarding claims 5 and 28, Smith discloses a top tree section [68, 79] having a center pole member [68] and a plurality of circumferentially spaced branches [69, 70, 71, 72] connected to the center pole member [68] (figure 1).

Regarding claims 6, 7, 29 and 30, Smith discloses each branch of the tree having a lighting element [66, 62, 73, 74, ...] (figures 1 and 4, column 4 lines 1-10 and 45-55, column 5 lines 23-26).

Regarding claims 8 and 31, Smith discloses an electrical connection [67] between the lighting elements [66, 62, ...] of the tree and the lighting elements [73, 74, ...] of the top tree section (figure 1).

Regarding claims 9 and 34, Petrovsky discloses an electric motor [3] and a shaft [2] being rotatable by the motor [3] to raise and lower the telescoping center pole [T1, T2, ...] (figures 1-3).

Regarding claims 10 and 35, Petrovsky discloses the shaft [2] having threaded section [G] (figures 1-3).

Regarding claims 11 and 36, Petrovsky discloses a control panel having a switch being operable by a user, which is inherently by the electric motor [3]. The electric motor [3] needs a switch for operating (see Chen US 6,247,991 B1).

Regarding claims 12 and 37, Smith discloses a control panel having a switch [3] being operable by a user to turn on/off light elements (figure 1).

***Allowable Subject Matter***

4. Claims 32 and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Claim 32 recites at least one flexible branch tether that limits downward movement of each pivotally connected branch around the ring to which it is pivotally connected, which is not disclosed or suggested in the prior of record.

Claim 34 is dependent on claim 33.

5. Claims 47 and 48 are allowed. The reasons for the indication of allowable subject matter of claims 47 and 48 have been indicated in the previous office action.

***Response to Amendment***

6. Applicant's amendments with respect to claims 47 and 48 have been considered. However, while updating search, a new reference, Smith [US 3,970,834], is applied for independent claims 1 and 26, and their dependency.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Q. Truong whose telephone number is (571) 272-2383. The examiner can normally be reached on Monday-Friday (8:00 AM - 4:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Bao Q. Truong  
Examiner  
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